RUSSELL R. GILSON

IBLA 83-272 Decided September 6, 1983

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting small tract application and offering direct sale of tract for the current fair market value. NEV 033243.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Repealers -- Small Tract Act: Generally

   The Small Tract Act, 43 U.S.C. § 682a (1976), was repealed by sec. 702 of the Federal Land Policy and Management Act of 1976, Oct. 21, 1976.

2. Applications and Entries: Vested Rights -- Small Tract Act: Applications

   The mere filing of a small tract application does not create in the applicant any right or interest in the land. An applicant for land under the Small Tract Act, 43 U.S.C. § 682a (1976), cannot acquire any right or interest in the land by virtue of administrative delay in processing the application.

APPEARANCES: Russell R. Gilson, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

In 1955 Russell R. Gilson filed application NEV 033243 pursuant to the Small Tract Act of June 1, 1938, as amended, 43 U.S.C. § 682a (1976). By letter decision dated November 23, 1982, 1/ the Bureau of Land Management (BLM), rejected the application stating that because the Small Tract Act had been repealed with the passage of section 702 of the Federal Land Policy and

1/ On Sept. 3, 1981, BLM issued a decision rejecting Gilson's application for failure of Gilson to maintain a current address with BLM. We are unaware of any regulation which calls for rejection of an application for failure to maintain a current address. Indeed, BLM did not rely on that decision because it issued the Nov. 23, 1982, decision directed to the same address as the Sept. 3, 1981, decision and it was delivered to appellant at his current address on Nov. 30, 1982.

Management Act of 1976 (FLPMA), 90 Stat. 2789, on October 21, 1976, the provisions of the Small Tract Act no longer applied. Gilson filed an appeal from the rejection of the application.

In his statement of reasons for appeal, Gilson states that FLPMA did not repeal the Small Tract Act, but only foreclosed the further filing of applications for small tracts. As his small tract application had been on file with BLM for more than 20 years, he contends that he has a vested interest to receive the small tract for which he filed. He suggests that BLM held the land in trust for him pending disposition of the conflicting mineral interests. Appellant argues that the "pink slip" (receipt for filing fee and advance rental) issued to him by BLM represents a binding contract. Finally, he contends generally that the current appraisals do not reflect fair market value because they are too high.

[1] Looking at the first argument, section 702 of FLPMA, styled "Repeal of laws relating to homesteading and small tracts," reads as follows: "Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed * * *." Included among the laws repealed by this section are the Act of June 1, 1938, 52 Stat. 609 (the original Small Tract Act), the Act of July 14, 1945, 59 Stat. 467, and the Act of June 8, 1954, 68 Stat. 239 (both amendatory acts to the original Small Tract Act). Contrary to appellant's belief, the Small Tract Act was effectively repealed October 21, 1976, by FLPMA. John N. Dillingham, 73 IBLA 156, 158 (1983).

[2] The argument that the "pink slip" issued by BLM represents a binding contract has no merit. The Department has long held that an applicant for land under the Small Tract Act cannot acquire any right or interest in the land by the filing of an application, nor may any such right or interest be acquired because of a delay in the processing of the application. The filing of an application entitles the applicant only to have the application considered. Leon H. Rockwell, 72 IBLA 373 (1983), and cases cited. 2/

Accompanying the decision sent on November 23, 1982, was a letter offering Gilson an opportunity to purchase the lands sought by him in his application without competitive bidding. The fair market value of the tract was quoted. Gilson contends generally that the quoted value is too high. Gilson, however, has submitted no evidence to support his claim that the price set forth by BLM does not represent fair market value. 3/ BLM's value is supported by a comprehensive appraisal report. See Gladys Yonich, 74 IBLA 285 (1983).

2/ By decision dated May 10, 1962, BLM rejected the application and offered the applicant an alternate site nearby. BLM later modified its decision to allow the original application to remain pending. On May 1, 1964, BLM again allowed appellant the chance to obtain an alternate tract. In neither instance did appellant accept the offering of an alternative tract.

3/ Appellant merely states that "the last two auctions of land in Las Vegas by the BLM resulted in only one sale out of a total of 150 parcels. The reason for this was that the prices asked were exorbitant and thus did not reflect fair market value for the land."

FLPMA repealed the Small Tract Act in 1976, during protracted litigation which had impeded the processing of the application. 4/ The time consumed by the various appeals cannot be attributed to lack of expedition by BLM.

Sales of public land are now governed by section 203 of FLPMA, 43 U.S.C. § 1713 (1976), and for land in Clark County, Nevada, by P.L. 96-586, Act of December 23, 1980, 94 Stat. 338. These statutes require sale of public lands for not less than current fair market value. See 43 U.S.C. § 1713(d) (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Bruce R. Harris
Administrative Judge

We concur:

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Gail M. Frazier
Administrative Judge

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R. W. Mullen
Administrative Judge

4/ Conflicts with unpatented mining claims delayed adjudication of the small tract applications. Resolution of the conflicts did not occur until Mar. 23, 1981, when the U.S. Supreme Court denied certiorari of a circuit court ruling (McCall v. Boyles, 624 F.2d 192 (9th Cir. 1980)), which affirmed the decision of the U.S. District Court of Nevada. McCall v. Watt, 450 U.S. 997 (1981).